

No. 1194/06
Presented by Sri N.P. Koley
dated 26/4/06

1

13-152

(3)

**IN THE HIGH COURT OF JUDICATURE OF
CHHATTISGARH AT BILASPUR**

M.C. C. No. 239 /2006

Division Bench

APPLICATION FOR REVIEW UNDER SECTION 114

READ WITH ORDER 47 RULE 1 OF CPC

**Applicant/
Respondent/
Defendant**

:: Chaturbhuj Murarka, aged
about 57 years, Son of late Shri
Mahaveer Prasad Murarka,
resident of Khaparganj, Tahsil
and District Bilaspur (C.G.)

VERSUS

**Non-applicant No.1
Appellant**

1) Smt. Kadeera Bee, aged about
89 years, widow of late
Karimuddin, R/o.
Khaparganj, Tahsil and
District Bilaspur (C.G.)

**Non-applicant No.2/
Respondent/
Defendant No.2**

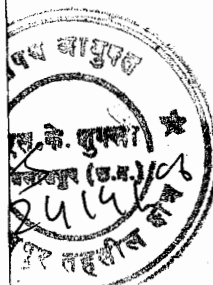
2) Shahnaz Begum, aged about
36 years, daughter of
Jahruddin, R/o. Khaparganj,
Tahsil and District Bilaspur
(C.G.)

**Non-applicants/
Appellants**

2-A Sheikh Basheer, aged about
33 years, S/o. Wahiduddin,
R/o. Khaparganj, Tahsil and
District Bilaspur (C.G.)

2-B Lallu, aged about 36 years,
S/o. Wahiduddin, R/o.
Khaparganj, Tahsil and
District Bilaspur (C.G.)

3) Kamalnisha (Quamaruddin),
aged about 66 years, widown
of late Abbas Beg, R/o.
Khaparganj, Tahsil and
District Bilaspur (C.G.) at
present residing at Talapara,



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आदेश पत्रक (पूर्वानुबद्ध)

(52)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH: -</u> <u>HON'BLE MR. L.C. BHADOO AND</u> <u>HON'BLE MR. DHIRENDRA MISHRA, JJ.</u> <u>28-6-2006</u> Shri K.A. Ansari, Sr. Advocate with Shri R.L. Bajpai, Advocate for the applicant. Heard on M.C.P. No.794/06 for condonation of delay in filing the review petition against the judgment of this Court dated 6.2.2006 whereby first appeal filed by non-applicants No.1 & 2 herein was allowed and the trial court was directed to proceed with the suit. As per office report there is delay of 32 days in filing the review petition, whereas, in the application for condonation of delay it has been mentioned that there is delay of 30 days. The grounds taken in this application for condoning the delay are that the applicant herein has met with a serious accident on 1.10.2003 and in that accident the applicant sustained grievous injuries, his treatment is continuing and from 15.2.2006 to 23.4.2006 the applicant was on bed reset due to medical problems created in the month of January, 2006. Affidavit in support of this application has been filed. We do not find any substance in this application, for the reason that in the first instance as per office report delay in filing the review petition is of 32 days, whereas, in the application condonation of 30	

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आदेश पत्रक (पूर्वानुबद्ध)

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	- 2 - days delay has been prayed for. As far as other ground is concerned, even if the applicant was advised for bed rest, it has not been mentioned that there were no other family members who can contact the advocate and file the review petition. Moreover, the advocate of the applicant herein was present on 6.2.2006 when the judgment under review was passed and as per this application, the application for certified copy of judgment was filed on 7.2.2006 and same was obtained on 22.2.2006, then where was the difficulty in filing the review. The person who obtained the certified copy could have filed the petition for review after consulting with the advocate and as such, the applicant has not been able to show reasonable cause for condonation of delay. Accordingly, the application for condonation of delay is rejected. Even otherwise, on merit also we do not find any substance in this review petition. For review of judgment under Order 47 Rule 1 of CPC powers vested with the Court are that the Court is entitle to review its order/judgment on account of some mistake/error apparent on the face of the record, or for any other reason, which does not postulate the rehearing of the dispute. The Hon'ble Apex Court in the matter of <i>Meera Bhanja V. Nirmala Kumari Choudhary</i> reported in 1995 (1) SCC 170 held that " It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC." 'The review	

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आदेश पत्रक (पूर्वानुबद्ध)

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	-3- of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason'. In the present case, judgment dated 6.2.2006 was passed on the basis that learned trial court while allowing the application of the defendants filed under Clause (d) of Rule 11 Order 7 of the CPC and rejecting the plaint ought to have considered the contents of the plaint only. Same judgment was passed after hearing the counsel for respective parties and the Court observed that the impugned order passed by the trial Court is prima-facie perverse. The Court below has dismissed the suit of the plaintiff by holding that the suit is barred by law of limitation. In paragraph 8 of the impugned order it has been mentioned that the plaintiff has not pleaded as to on what date she learnt about the impugned judgments and there is no pleading regarding new cause of action. In the aforesaid circumstances, it would be held that the applicant had the knowledge of judgment and decree dated 6-9-86 & 31-3-98 on the respective dates. The above reasoning of the Court below is contrary to the pleadings of the plaintiff. Thus, the	

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आदेश पत्रक (पूर्वानुबद्ध)

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	-५- plaintiff in paragraph 12 of the plaint has pleaded that he learnt about the judgment and decree only after inspection of record of those cases in December, 2002, as the aforesaid objection was taken by defendant No.1 in the written statement filed in Civil Suit No.63-A/2000 in the Court of 3rd Civil Judge, Class-I and the cause of action again arose to the plaintiff within the pecuniary territorial jurisdiction of the trial Court after 24-4-2003 and on 30-4-2003 when defendant No.1 applied for permission before the Corporation for construction over the disputed plot after demolishing the marked portion of construction. Thus, from over all reading of the plaint, it cannot be said that the plaintiff did not have cause of action afresh for filing the subsequent suit. It is settled law that while considering the provisions of Clause (d) of Rule 11 of Order 7 of the C.P.C. the Court is required to look into the facts mentioned in the plaint only and in the plaint, in para-12, it has been mentioned that the judgment and decree dated 6-9-86 passed in civil suit No.8-A/79 and judgment and decree dated 31-3-98 passed in civil suit No.1-A/97 were obtained by committing fraud, summons were never served on the plaintiff and, therefore, those decrees are not binding on the plaintiff. The plaintiff came to know about those decrees when counsel for the plaintiff inspected those files in the month of December, 2002 after filing the written statement on 23-10-2001 on behalf of respondent No.1 in the earlier suit. In para-21	

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आदेश पत्रक (पूर्वानुबद्ध)

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	of the plaint, it has been mentioned that cause of action arose on 24-4-2003 and 30-4-2003 when the plaintiff withdrew the earlier suit and thereafter filed this suit. For the purpose of limitation whether the instant suit filed by the plaintiff is within time or not the date of filing of the earlier suit No.63-A/2000 cannot be taken into consideration for the reason that the said suit was filed simply for declaration and injunction against the respondent No.1 herein. The present suit has been filed with the averments that plaintiff No.1 had no knowledge about the judgment and decree dated 6-9-86 and 31-3-98 obtained by respondent No.1 herein in civil suits No.8-A/79 and 1-A/97. In view of the above facts, we are of the considered opinion that in the judgment dated 6.2.2006, review of which has been sought, there is no error apparent on the face of the record and no new & important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant is sought to be adduced, which requires review of the judgment passed by this Court. Therefore, the application for review is dismissed on the ground of delay as well as on merit. Consequently, I.A. Nos.1554/06 & 1555/06 also stand disposed of.	
	Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

3/8/06
4/8/06